



2002 Decisions

Opinions of the United States Court of Appeals for the Third Circuit

3-1-2002

Ciaverelli v. Stryker Med

Follow this and additional works at: https://digitalcommons.law.villanova.edu/thirdcircuit_2002

Recommended Citation

"Ciaverelli v. Stryker Med" (2002). *2002 Decisions*. 141.
https://digitalcommons.law.villanova.edu/thirdcircuit_2002/141

This decision is brought to you for free and open access by the Opinions of the United States Court of Appeals for the Third Circuit at Villanova University Charles Widger School of Law Digital Repository. It has been accepted for inclusion in 2002 Decisions by an authorized administrator of Villanova University Charles Widger School of Law Digital Repository.

— — —

Pennsylvania

JUDGE

— — —

— — —

(Proceedings recorded by electronic sound recording;
transcript provided by AAERT-certified transcriber.)

1 (The following occurred in open court:)

2 THE HONORABLE JUDGE BECKER: The panel has
conferred
3 and concluded that we are in as good a position to decide
4 this case now as we will ever be. There is nothing here
5 which requires a precedential opinion; the case simply
6 involves the application of the facts of record to
settled
7 principles, so there would be no point to our writing an
8 opinion for publication. Accordingly I will now deliver
the
9 opinion and judgment of the Court from the bench. And
under
10 our practice this will be sent to a reporter and it will
be
11 transcribed and ultimately filed of record in written
form.

12 This is an appeal from an order of the District
13 Court dated August 29th, 2000 which states only that
"Upon
14 consideration of defendant's motion to dismiss for
failure to
15 comply with court orders compelling discovery, and
following
16 telephone conference call in this matter on July 18th,
2000,
17 and the expiration of a 30-day extension of time given to
18 plaintiff at that time, it is hereby ordered that the
19 defendant's motion to dismiss is granted and plaintiff's

See

20 Complaint is dismissed in its entirety with prejudice.

21 Federal Rule of Civil Procedure 37(b)(2)(C)."

this

22 It is the considered judgment of the panel that

23 articulation does not satisfy the rigorous standards

have

24 established by this Court for sanctions dismissals. We

25 made it clear that dismissal with prejudice is an extreme

3

1 sanction for only the most egregious cases. See, e.g.,

866

2 Poulis v. State Farm Fire & Casualty Co., 747 F.2d 863,

drastic

3 (3rd Cir. 1984). We have said that "dismissal is a

there

4 sanction and should be reserved for those cases where

5 is a clear record of delay or contumacious conduct by the

F.2d

6 plaintiff. Donnelly v. Johns-Manville Sales Corp., 677

7 339, 342 (3rd Cir. 1982)."

the

8 Now, we understand that we review the order of

our

9 District Court for abuse of discretion which means that

10 review is deferential. But in deciding whether or not a

by

11 District Court has abused its discretion, we are guided

and 12 the manner in which the Court balanced the Poulis factor,
13 whether the record supports its finding. Poulis laid out
six 14 factors to be considered by District Court in determining
15 whether to dismiss pursuant to Rule 37. I need not
burden 16 the record by listing the six factors, because all of us
are 17 familiar with them.

18 The problem with the order of the District Court
in 19 this case is that there has been no articulation by the
20 District Court of the Poulis factors. And in similar
21 situations where there has been no articulation, we have
22 required a remand to the District Court. See, e.g.,
Titus v. 23 Mercedes Benz of North America, an opinion that I
authored, 24 695 F.2d 746, 749 and 50 (3rd Cir. 1982).

25 Judge Joyner is a very able member of the
District

4

1 Bench, a man whom we all admire and respect. But just as
it 2 was said of the great Homer, that Homer nods, in this
case

note

3 Judge Joyner nodded and acted a little precipitously. I

4 that the panel is not certain that he had all the facts

5 before him in terms of what plaintiff's counsel had done.

of

6 And indeed we have serious doubt that a clear balancing

7 the Poulis factors would have justified a dismissal,

8 especially in light of the concession that counsel for

9 appellee was constrained to make at oral argument this

the

10 morning that there really is no information other than

I

11 matter of the correct serial number of the bed, to which

have.

12 will turn in a moment, that the defendant does not now

13 Now, we will surely not pin any medals on

the

14 plaintiff's counsel for celerity or diligence in getting

15 material to the defense. She acted here more like the

what

16 tortoise than the hare, but ultimately she did get them

17 they needed.

notwithstanding

18 With respect to the serial number of the bed, it

19 appears from our colloquy this morning that

20 the defense remonstrated that it has been five years and

21 that she had all of this time, plaintiff's counsel

22 represented that they fairly believed to have the correct

with

23 serial number and were pursuing the location of the bed

24 the officials at St. Mary's Hospital, that they had made

not 25 requests for information, but were stonewalled and did

5

1 have an opportunity to pursue it by discovery because the
2 sanctions dismissal intervened.

3 We have some doubts under the circumstances as
to

4 whether the history of dilatoriness would justify
sanctions.

5 There does not appear to us to be willfulness and bad
faith

6 on the part of the plaintiff's counsel or real
responsibility

7 on the plaintiff. While we're not sure the Complaint is
8 meritorious because we don't know what will happen with
the

9 bed, we certainly cannot resolve this issue at this
point.

10 At all events, if plaintiff fails to locate the
bed

11 after discovery, this will be an appropriate matter for
the

12 Court to take up on summary judgment.

13 Accordingly, we conclude that our cases
constrain us

14 to conclude that the District Court abused its discretion
in

15 ordering the case dismissed as a sanction. It made no

not 16 findings, it did not do the balancing, and it indeed did
17 conclude that lesser sanctions would better serve the
18 interests of justice which is another of our
requirements.
19 Whether or not lesser sanctions are in order in this case
is
20 a matter that we leave to the District Court on remand.
21 Appellee's counsel has pointed out that some of the cases
22 that plaintiff has cited and that I have adverted to in
this
23 bench opinion were cases where the dismissal was sua
sponte,
24 but those opinions nonetheless clearly set forth Circuit
law
25 and have been adopted in cases where the dismissal was
not

6

1 sua sponte.
2 Accordingly, the order of the District Court
will be
3 reversed and the case remanded to the District Court for
4 further proceedings. Costs will be taxed against the
5 appellee. This constitutes the opinion and judgment of
the
6 Court, but the formal opinion and judgment will follow.
7 Judge McKee, do you have anything to add or do
you

8 concur in the opinion as delivered?

add. 9 HONORABLE JUDGE McKEE: I concur; nothing to

10 HONORABLE JUDGE BECKER: Judge Barry?

add. 11 HONORABLE JUDGE BARRY: I concur; nothing to

12 HONORABLE JUDGE BECKER: Very well.

in 13 Thank you, and the crier will notify whoever is

much. 14 charge of processing bench opinions. Thank you very

15 (Conclusion of bench opinion)

TO THE CLERK:

Please file the foregoing Opinion.

BY THE COURT:

/s/ Edward R. Becker
Chief Judge

